

| | | |
|---|------------------|-------|
| Jose Ramirez-Salgado | | FILED |
| NAME C-11124 | 2254 1983 | |
| PRISON NUMBER D2-233-L | FILING FEE PAID | |
| F.C. Box 5002 Calipatria CA 92233-5002 | Yes | No |
| CURRENT ADDRESS OR PLACE OF CONFINEMENT | MPP MOTION FILED | |
| | Yes | No |
| | COPIES SENT TO | |
| | Court | ProSe |
| CITY, STATE, ZIP CODE | | |

2008 MAR 25 PM 4:09

CLERK, US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 0562 WQH WMc

Jose Ramirez-Salgado,
 (FULL NAME OF PETITIONER)

PETITIONER

v.

Tim Cchoa, (A) Warden
 (NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
 PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE
 CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT
 and

Jerry Brown,
 The Attorney General of the State of
 California, Additional Respondent.

Civil No. _____

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
 BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: Superior Court of California, San Diego County, San Diego CA.
2. Date of judgment of conviction: November 1, 1979
3. Trial court case number of the judgment of conviction being challenged: CR 47435
4. Length of sentence: 20 to life

5. Sentence start date and projected release date: November 28, 1979 -
Upon Board Hearing
6. Offense(s) for which you were convicted or pleaded guilty (all counts): P.C. Sections
187 Second degree murder; 245 assault with a deadly weapon;
211 robbery; and 12022.5 firearm.
7. What was your plea? (CHECK ONE)
- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
- (a) Jury
- (b) Judge only
9. Did you testify at the trial?
 Yes No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?

Yes No

11. If you appealed in the California Court of Appeal, answer the following:

- (a) Result: _____
- (b) Date of result, case number and citation, if known: _____
- (c) Grounds raised on direct appeal: _____

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:

- (a) Result: _____
- (b) Date of result, case number and citation, if known: _____
- (c) Grounds raised: _____

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: _____
- (b) Date of result, case number and citation, if known: _____

- (c) Grounds raised: _____

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

Yes No

15. If your answer to #15 was "Yes," give the following information:

- (a) California Superior Court Case Number: HC 17291
- (b) Nature of proceeding: Habeas Corpus Challenging BPT decision.

- (c) Grounds raised: BPH must follow the same rules as sentencing Court; IAC at BPH; Due Process violations by BPH repeated failures to find Petitioner suitable based on unchanging factors, et al. Misrepresentation of the Facts of the case by DA to BPH; BPH's finding that parole plans in Mexico are unrealistic, violate law.
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No Petitioner requested one and discovery.
- (e) Result: Denied without discovery or hearing.
- (f) Date of result: April 11, 2006.

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

Yes No

17. If your answer to #17 was "Yes," give the following information:

- (a) California Court of Appeal Case Number: D043877
- (b) Nature of proceeding: Habeas Petition on BPH Hearing

- (c) Grounds raised: Same as the Superior Court

(d) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No Petitioner requested it and discovery

(e) Result: Denied

(f) Date of result: September 15, 2006

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?
 Yes No

19. If your answer to #19 was "Yes," give the following information:

(a) California Supreme Court Case Number:

(b) Nature of proceeding: Habeas Corpus challenging BPH.

(c) Grounds raised: Same as Above.

(d) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No Petitioner asked for one and discovery.

(e) Result: Denied

(f) Date of result: _____

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?

Yes No (IF "YES" SKIP TO #11)

(a) If no, in what federal court was the prior action filed? _____

(i) What was the prior case number? _____

(ii) Was the prior action (CHECK ONE):

Denied on the merits?

Dismissed for procedural reasons?

(iii) Date of decision: _____

(b) Were any of the issues in this current petition also raised in the prior federal petition?

Yes No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

Yes No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.

 - **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.

 - **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.
-

GROUND FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** State Courts Deprived Petitioner of Due Process and Equal Protection of Law by refusing to hold Evidentiary Hearing and denying discovery.

Supporting FACTS (state briefly without citing cases or law)

Please see pages 6 of Attached Memorandum for all the facts
of this issue.

Did you raise GROUND ONE in the California Supreme Court?

Yes No. This is Challenging the State Courts refusal to grant an evidentiary hearing and discovery thus their holdings fail to meet the Standards of the AEDPA.

(b) **GROUND TWO:** State Board have Violated Petitioner's Due Process rights and Equal Protection of Law, and Constitutionally protected Liberty interest in Parole.

Supporting FACTS (state *briefly* without citing cases or law): _____
Please See Pages 7 through 19 of Attached Memorandum .

Did you raise GROUND TWO in the California Supreme Court?
 Yes No.

(c) **GROUND THREE:** Ineffective assistance of Counsel before,
During and After the BPH Board Hearing.

Supporting FACTS (state *briefly* without citing cases or law): _____

Please See Pages 20-23 of Attached Memorandum.

Did you raise **GROUND THREE** in the California Supreme Court?

Yes No.

(d) **GROUND FOUR:** Petitioner has a Constitutionally Protected Right
a Liberty Interest in Parole.

Supporting FACTS (state *briefly* without citing cases or law): _____
Please See Pages 24-27 of Attached Memorandum.

Did you raise **GROUND FOUR** in the California Supreme Court?

Yes No.

(e) GROUND FIVE: The State has Violated the Plea Bargain at all Parole Hearings by Claiming 'Facts' not Adjudicated in Court in Support of Finding Petitioner Unsuitable for Parole.

Supporting Facts: Please See Pages 28 - 30 of Attached Memorandum.

Did you raise Ground Five in the California Superior Court?

X Yes No.

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

Yes No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

(e) Grounds raised: _____

(f) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: _____

1, 2008

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

3/27, 2008

(DATE)

J. Ranney Salgado

SIGNATURE OF PETITIONER